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No. 07-658

1-22-08

In the Supreme Court of the United States

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ET AL., PETITIONERS

v.

FEDERAL ENERGY REGULATORY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL ENERGY REGULATORY COMMISSION IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Federal Energy Regulatory Commission (FERC), in exercising its authority under the Federal Power Act, 16 U.S.C. 791a *et seq.*, had authority to prohibit public utilities from exercising their state-granted eminent domain authority in a discriminatory manner when responding to electrical interconnection requests.

2. Whether FERC has authority to regulate the interconnection of electric generators to certain distribution-level transmission facilities, where such facilities are already subject to a FERC-filed tariff and the interconnection is for the purpose of making a FERC-jurisdictional wholesale sale of electric energy.

3. Whether the orders under review are impermissibly vague.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A31) is reported at 475 F.3d 1277. The orders of the Federal Energy Regulatory Commission are reported at 104 F.E.R.C. ¶ 61,103, 106 F.E.R.C. ¶ 61,220, 109 F.E.R.C. ¶ 61,287, and 111 F.E.R.C. ¶ 61,401.

JURISDICTION

The judgment of the court of appeals was entered on January 12, 2007. A petition for rehearing was denied on June 20, 2007 (Pet. App. A37-A38). On September 11, 2007, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including

November 19, 2007, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Section 201 of the Federal Power Act (FPA), 16 U.S.C. 791a *et seq.*, gives the Federal Energy Regulatory Commission (Commission or FERC) jurisdiction over the "transmission of electric energy in interstate commerce," the "sale of electric energy at wholesale in interstate commerce," and "all facilities for such transmission or sale." 16 U.S.C. 824(b)(1). See *New York* v. *FERC*, 535 U.S. 1, 19-20 (2002). The States retain jurisdiction over "any other sale of electric energy" and "facilities used in local distribution" of electricity. 16 U.S.C. 824(b)(1). The FPA directs FERC to ensure that all rates and charges for (or in connection with) transmission services or wholesale electric sales subject to its jurisdiction, and all rules, regulations, or practices affecting such rates and charges, are just and reasonable and not unduly discriminatory or preferential. 16 U.S.C. 824d, 824e (2000 & Supp. V 2005).

b. "Historically, electric utilities were vertically integrated, owning generation, transmission, and distribution facilities and selling these services as a 'bundled' package to wholesale and retail customers in a limited geographical service area." *Public Util. Dist. No. 1* v. *FERC*, 272 F.3d 607, 610 (D.C. Cir. 2001). In 1996, the Commission adopted Order No. 888, which ordered the functional unbundling of wholesale generation and transmission services—that is, it required public utilities to announce separate rates for their wholesale gen-

eration, transmission, and ancillary services.[1] In particular, utilities were required to offer non-discriminatory, open-access transmission service, to take transmission service for their own wholesale sales and purchases under the same general tariff applicable to others, and to separate their transmission and generation marketing functions and communications. See *New York*, 535 U.S. at 11. FERC based Order No. 888 on its finding "that electric utilities were discriminating in the 'bulk power markets,' in violation of 16 U.S.C. 824d, by providing either inferior access to their transmission networks or no access at all to third-party wholesalers of power." *Ibid.* In *New York*, this Court upheld Order No. 888 in its entirety.

Order No. 888 did not directly address the interconnection of electric generating facilities and transmission facilities. The Commission recognized, however, that interconnection of generators to the grid was a critical component of open-access transmission service and was therefore subject to the basic requirement that public utilities offer comparable, non-discriminatory service under the terms of their FERC-filed open-access tariffs. See *Tennessee Power Co.*, 90 F.E.R.C. ¶ 61,238 (2000); *Standardization of Generator Interconnection Agree-*

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[1] See generally *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. and Transmitting Utils.*, Order No. 888, 75 F.E.R.C. ¶ 61,080, at 61,238 (61 Fed. Reg. 21,540 (1996)), clarified, 76 F.E.R.C. ¶ 61,009, at 61,024, and 76 F.E.R.C. ¶ 61,347, at 62,646 (1996), orders on reh'g, Order No. 888-A, 78 F.E.R.C. ¶ 61,220, at 61,951 (62 Fed. Reg. 12,274 (1997)), Order No. 888-B, 81 F.E.R.C. ¶ 61,248, at 62,069 (1997), and Order No. 888-C, 82 F.E.R.C. ¶ 61,046 (1998), aff'd *sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000), aff'd *sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

ments and Procedures, Order No. 2003, 104 F.E.R.C. ¶ 61,103, at ¶ 9 (2003), on reh'g, Order No. 2003-A, 106 F.E.R.C. ¶ 61,220 (2004), on reh'g, Order No. 2003-B, 109 F.E.R.C. ¶ 61,287 (2004), on reh'g, Order No. 2003-C, 111 F.E.R.C. ¶ 61,401 (2005). Initially, FERC addressed interconnection issues on a case-by-case basis, but that approach led to complex technical disputes about issues such as the feasibility of interconnection and responsibility for costs. See Order No. 2003, 104 F.E.R.C. ¶ 61,103, ¶¶ 10, 11. The delays caused by such disputes, the Commission found, "undermine[d] the ability of generators to compete in the market and provide[d] an unfair advantage to utilities that own both transmission and generation facilities." *Id.* ¶ 11.

2. In light of the inadequacy of a case-by-case analysis, the Commission decided to adopt standard interconnection procedures and a standard interconnection agreement. See Order No. 2003, 104 F.E.R.C. ¶ 61,103, at ¶ 12. After notice-and-comment rulemaking, the Commission issued Order No. 2003, which requires any public utility that owns, controls or operates facilities used for transmitting electric energy in interstate commerce to have on file with FERC, as part of its open-access tariff, standard interconnection procedures and a standard interconnection agreement applicable to all generators with a capacity of 20 megawatts or greater. See *id.* ¶ 11 & n.10.[2]

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[2] In a separate rulemaking, the Commission established interconnection procedures and a standard interconnection agreement applicable to small generators with a capacity of less than 20 megawatts that seek interconnection to the transmission system of a public utility. See *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 111 F.E.R.C. ¶ 61,220, on reh'g, Order No.

Order No. 2003 governs interconnections to any transmission facilities "that, at the time the interconnection is requested, may be used either to transmit electric energy in interstate commerce or to sell electric energy at wholesale in interstate commerce pursuant to a Commission-filed [open-access tariff]." Order No. 2003, 104 F.E.R.C. ¶ 61,103, ¶ 804; see Order No. 2003-A, 106 F.E.R.C. ¶ 61,220, ¶ 710; Order No. 2003-C, 111 F.E.R.C. ¶ 61,401, ¶ 51. Thus, the order applies to "interconnections to a 'distribution' facility" when two conditions are satisfied: (1) "the facility is included in a public utility's Commission-filed [open-access tariff]," and (2) "the interconnection is for the purpose of facilitating a jurisdictional wholesale sale of electric energy." Order No. 2003-A, 106 F.E.R.C. ¶ 61,220, ¶ 730.

The Commission acknowledged that, under 16 U.S.C. 824(b)(1), it generally does not have jurisdiction over "facilities used in local distribution." It explained that "distribution" is an "unfortunately vague term * * * usually used to refer to lower-voltage lines that are not networked and that carry power in one direction." Order No. 2003, 104 F.E.R.C. ¶ 61,103, ¶ 803. "Some lower-voltage facilities are 'local distribution' facilities not under [FERC] jurisdiction, but some are used for jurisdictional service such as carrying power to a wholesale power customer for resale and are included in a public utility's [open-access tariff]." *Ibid.* With regard to facilities that have a "dual use"—*i.e.*, facilities used both to deliver wholesale electricity for resale and to distribute retail electricity to end users—only the use of such facilities to facilitate a FERC-jurisdictional wholesale sale

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2006-A, 113 F.E.R.C. ¶ 61,195 (2005), on clarification, Order No. 2006-B, 116 F.E.R.C. ¶ 61,046 (2006).

would be subject to FERC jurisdiction; States would retain authority over uses subject to their jurisdiction. See Order No. 2003-A, 106 F.E.R.C. ¶ 61,220, ¶ 735. In adopting that interpretation of its jurisdiction under the FPA, the Commission explained, it was "asserting no jurisdiction beyond what it asserted in Order No. 888." See *id.* ¶ 705.

As part of its mandate of non-discrimination, Order No. 2003 requires a utility, when interconnecting with an unaffiliated generator, to use efforts similar to those it typically employs on behalf of its own or an affiliate's generators to secure land rights for the customer's interconnection facilities. Order No. 2003, 104 F.E.R.C. ¶ 61,103, ¶ 391. To obtain those rights, a utility might find it necessary to use the eminent-domain authority granted to it by a State. The Commission made clear, however, that "any use of eminent domain power must be in accordance with state law." Order No. 2003-A, 106 F.E.R.C. ¶ 61,220, ¶ 300. And a utility is required to use eminent domain to interconnect with an unaffiliated generator "only to the extent that it uses eminent domain to site Interconnection Facilities * * * for its own, or affiliated, generation." *Ibid.*

3. Petitioners—a group of state public utility regulatory commissions—sought review of Order No. 2003 and the orders following it. The court of appeals denied the petitions for review. Pet. App. A1-A24.

a. The court of appeals held that FERC had not exceeded its jurisdiction in regulating interconnections to facilities that are also used for local distribution. Petitioners relied on *Detroit Edison Co.* v. *FERC*, 334 F.3d 48 (D.C. Cir. 2003), in which the court had rejected FERC's attempt to assert jurisdiction over unbundled retail electricity transactions because such transactions

involved neither a wholesale sale of electric energy nor a transmission of electric energy in interstate commerce. In this case, by contrast, the court explained that "the issue is the inverse of *Detroit Edison*; Order No. 2003 applies to jurisdictional transactions only." Pet. App. A10.

The court of appeals also rejected petitioners' arguments that Order No. 2003 exceeded the limits of the Commission's FPA jurisdiction by regulating "certain facets of the engineering and construction of facilities needed for the relevant transmissions." Pet. App. A11. The court concluded that petitioners had identified "no specific aspect of the regulations that they claim is untethered to the Commission's authority over interstate transmissions and wholesale sales." *Ibid.* The court further noted that while the Commission's exercise of its ordinary and "indisputable" authority under the FPA might as a practical matter impinge on non-jurisdictional matters, "petitioners in this facial attack have identified no impingement that exceeds what may be encompassed in such conventional exercises of jurisdiction." *Ibid.*

The court of appeals likewise rejected petitioners' contention that FERC engaged in improper "jurisdictional 'boot-strapping'" by applying Order No. 2003 to interconnections to "dual-use" facilities (*i.e.*, facilities used for both FERC-jurisdictional and state-jurisdictional transactions). Pet. App. A14-A15. The court explained that FERC's exercise of jurisdiction is "the exact opposite of boot-strapping," since the Commission only asserted authority over interconnections to "distribution" facilities "when the facility is included in a public utility's Commission-filed [open-access tariff] *and* the interconnection is for the purpose of facilitating a juris-

dictional wholesale sale of electric energy." *Id.* at A15 (quoting Order No. 2003-A, 106 F.E.R.C. ¶ 61,220, ¶ 730).

Finally, the court of appeals rejected petitioners' challenge to the Commission's requirement that a public utility use reasonable efforts, similar to those it employs for its own or affiliated generators, to facilitate interconnections. Pet. App. A16-A19. Petitioners suggested that, because that requirement encompassed the exercise of eminent-domain authority, it amounted to federal "commandeering" of state eminent-domain power, contrary to *New York* v. *United States*, 505 U.S. 144 (1992), and *Printz* v. *United States*, 521 U.S. 898 (1997). The court concluded, however, that Order No. 2003 is a "far cry from what the Supreme Court found objectionable in *New York* and *Printz*." Pet. App. A16. The order "bind[s] only utilities—not state officials," *id.* at A18, and even then, it does "nothing more than impose a nondiscrimination provision" on public utilities, *id.* at A17. The court emphasized that the order "explicitly leave[s] state law untouched." *Ibid.* "Thus the states remain completely free to continue licensing public utilities to exercise eminent domain, or to discontinue that practice," and "[n]othing * * * compels either continued state retention of the license, or public utilities' continued employment of eminent domain." *Id.* at A17-A18.

b. Judge Sentelle dissented in part. Pet. App. A24-A31. Although he agreed with the court's conclusion that FERC had acted within its jurisdiction in regulating distribution facilities, he disagreed with the decision to affirm the eminent-domain provisions of the order. In his view, "eminent domain is properly categorized as a 'substantial sovereign power' of the states, even when that power has been delegated to a public utility," *id.* at

A28 (citation omitted), and therefore FERC may not regulate the use of state eminent-domain power in the absence of a clear statutory authorization, *id.* at A30. According to Judge Sentelle, Order No. 2003 exceeds FERC's statutory authority because it "will require transmission providers either to forego the use of their state-granted eminent domain power altogether, or to use this power to condemn property on behalf of unaffiliated generators." *Id.* at A28.

ARGUMENT

In the orders at issue here, FERC acted reasonably to establish standard procedures to address the potential for undue discrimination by public utilities that own, operate, or control transmission facilities against competing electric generators seeking to interconnect to the grid. In so doing, the Commission crafted a limited nondiscrimination requirement related to a public utility's exercise of its state-granted eminent-domain authority—a requirement that does not intrude on the States' exercise and control of that power. Further, the Commission limited its jurisdiction over interconnections to facilities that are used in a FERC-jurisdictional wholesale sale and that are already subject to a FERC-filed open-access tariff. That is precisely the same jurisdictional determination that the Commission reached in Order No. 888, which this Court affirmed in *New York* v. *FERC*, 535 U.S. 1 (2002). The court of appeals therefore correctly upheld the Commission's orders. Its decision does not conflict with any decision of this Court or of any other court of appeals, and further review is not warranted.

1. Petitioners assert (Pet. 18-26) that the decision of the court of appeals allows FERC to interfere with the

States' sovereign powers of eminent domain. Petitioners are incorrect. As the court of appeals explained, "the orders here leave state law completely undisturbed and bind only utilities—not state officials." Pet. App. A18. In fact, Order No. 2003 does "nothing more than impose a non-discrimination provision on public utilities." *Id.* at A17. Specifically, it requires that if a State grants eminent-domain authority to a public utility, and if the public utility exercises its authority for the benefit of its own or affiliated generators, then the public utility must take the same action on behalf of independent generators. See Order No. 2003-A, 106 F.E.R.C. ¶ 61,220, ¶ 300.

According to petitioners (Pet. 21-23), that provision of Order No. 2003 allows FERC to "dictate" the manner in which State-granted eminent domain power is used. But as the court of appeals explained, Order No. 2003 does no such thing. Rather, it is a non-discrimination provision that has only an indirect effect on the exercise of eminent-domain powers. And the incidental effect on state authority "is surely no greater than (many would say dramatically less than) that of a federal command that, if a state hires employees for the performance of traditional governmental functions, it must pay them no less than a federally determined wage." Pet. App. A18; cf. *Garcia* v. *San Antonio Metro. Transit Auth.*, 469 U.S. 528, 554 (1985) (holding that a requirement that States comply with the Fair Labor Standards Act is not "destructive of state sovereignty"). Petitioners cite various cases (Pet. 19) holding that a public utility acts as an agent of the State when it exercises eminent-domain authority, but the decision below is entirely consistent with that proposition. Order No. 2003 does not prohibit

or compel the exercise of eminent-domain power; it requires only non-discrimination.

Petitioners argue (Pet. 24-26) that FERC's order compels the States to enact and enforce a federal regulatory program, in violation of the Tenth Amendment as interpreted in *New York* v. *United States*, 505 U.S. 144 (1992), and *Printz* v. *United States*, 521 U.S. 898 (1997). The "commandeering" of state governments at issue in those cases involved "requir[ing] the States in their sovereign capacity to regulate their own citizens." *Reno* v. *Condon*, 528 U.S. 141, 151 (2000). Order No. 2003, however, does not compel state officials to take any action or to enforce any of FERC's regulatory requirements. On the contrary, it requires that "any exercise of eminent domain by a public utility pursuant to the orders' non-discrimination mandate be 'consistent with state law.'" Pet. App. A17 (quoting Order No. 2003-A, 106 F.E.R.C. ¶ 61,220, Large Generator Interconnection Agreement § 5.13; *id.* ¶ 300).[3] The order "does not require [States] to enact any laws or regulations, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals." *Condon*, 528 U.S. at 151. The court of appeals correctly held that "[t]he orders here are a far cry from what the Supreme Court found objectionable in *New York* and *Printz*." Pet. App. A16-A17.

2. Petitioners renew their contention (Pet. 26-36) that Order No. 2003 exceeds FERC's jurisdiction under the FPA. In their view, the Commission's assertion of jurisdiction over interconnections to "dual-use" distribution facilities is inconsistent with the divided federal-

[3] As a result, petitioners are incorrect when they suggest (Pet. 25) that FERC's order will require public utilities to broaden the use of eminent-domain authority beyond that authorized by state law.

state regulatory regime recognized by the statute. That claim lacks merit. In its orders, FERC exercised the jurisdiction granted to it under the FPA over transmission of electric energy in interstate commerce and wholesale sales of electric energy, and it fully respected the jurisdiction reserved to the States by the FPA.

Order No. 2003 applies only to distribution-level interconnections that involve transactions subject to FERC's jurisdiction under 16 U.S.C. 824(b)(1). As the court of appeals explained, the order governs interconnections to transmission facilities that also engage in local distribution only where the facilities in question are "included in a public utility's Commission-filed [open-access tariff]," Pet. App. A15, and "only insofar as the interconnections are for the purpose of making sales of electric energy for resale in interstate commerce," *id.* at A9 (quotation marks omitted). In other words, the Commission exercised its jurisdiction over interconnections to distribution facilities that also engage in state-regulated activity only where two criteria are met: (1) the facilities are already used for transmission of electric energy in interstate commerce (and are thus subject to a Commission-filed open-access tariff), and (2) the interconnection is directly connected to a wholesale sale. Both of those matters are explicitly within the Commission's jurisdiction under Section 824(b)(1). See *New York*, 535 U.S. at 16-17; *FPC* v. *Florida Power & Light Co.*, 404 U.S. 453, 454 (1972); *Connecticut Light & Power Co.* v. *FPC*, 324 U.S. 515, 523 (1945).

3. Petitioners err in suggesting (Pet. 26-36) that the decision below conflicts with several decisions of this Court and other courts.

a. Although petitioners mention it only in passing, this Court's decision in *New York*—and the underlying

decision of the court of appeals in *Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*TAPS*)—fully support the court of appeals' decision here. In *New York*, the Court considered FERC's Order No. 888, which asserted jurisdiction under Section 824 to regulate—and apply open-access requirements to—unbundled retail transmission of electricity. 535 U.S. at 11-12; see *TAPS*, 225 F.3d at 691. Recognizing that such transmission may take place over distribution-level facilities that had traditionally been under exclusive state regulation, the Commission adopted a seven-factor test to determine whether such a facility is one that meets the FPA's legal definition of "local distribution" (and thus remains under state regulation) or is engaged in interstate transmission (and thus is subject to FERC jurisdiction). See *New York*, 535 U.S. at 12 n.9; *TAPS*, 225 F.3d at 695-696. The court of appeals in *TAPS*, and subsequently this Court in *New York*, upheld FERC's jurisdictional determinations in all respects.

Here, the Commission did nothing more than exercise the same jurisdiction that it asserted in Order No. 888 with regard to distribution-level facilities. See Order No. 2003-A, 106 F.E.R.C. ¶ 61,220, ¶¶ 699, 705, 731 (explaining FERC's adherence to the jurisdictional conclusions reached in Order No. 888). The standard procedures and agreement of Order No. 2003 will apply to an interconnection to a distribution-level facility only if that facility is already subject to a Commission-filed open-access tariff, pursuant to FERC's jurisdiction under Order No. 888, *and* the interconnection is for the purpose of making a wholesale sale. FERC correctly concluded that applying the interconnection rules to facilities already subject to a FERC-filed open-access tariff would

"properly respect the jurisdictional bounds recognized by the courts in upholding Order No. 888." Order No. 2003-C, 111 F.E.R.C. ¶ 61,401, ¶ 51. Further exercising caution to ensure that it was acting within its FPA jurisdiction, the Commission appropriately required that the distribution-level interconnection be for the purpose of making a jurisdictional wholesale sale. See *TAPS*, 225 F.3d at 696 (Section 824(a) "makes clear that all aspects of wholesale sales are subject to federal regulation, regardless of the facilities used.").

In addition to upholding the basic jurisdictional determinations that FERC followed here, *New York* also confirms the Commission's ability to draw reasonable lines to define the extent of its own jurisdiction over wholesale sales and interstate transmission. See *New York*, 535 U.S. at 16-17. The Commission's decision to tie its exercise of jurisdiction over interconnections to both its FPA jurisdiction over transmission of electric energy in interstate commerce (by requiring that the distribution-level facility already be subject to a FERC open access tariff), and to its FPA jurisdiction over wholesale sales, is the essence of reasonable line-drawing. Cf. *Niagara Mohawk Power Corp.* v. *FERC*, 452 F.3d 822, 828 (D.C. Cir. 2006) ("[I]n drawing the jurisdictional lines in this area, some practical accommodation is necessary."), cert. denied, 127 S. Ct. 2129 (2007).

b. Petitioners assert (Pet. 31-32) that the decision of the court of appeals is inconsistent with that court's prior holding in *Detroit Edison Co.* v. *FERC*, 334 F.3d 48 (D.C. Cir. 2003). Even if petitioners were correct, such an intra-circuit conflict would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam). In any event, as the court of appeals explained, this case is the exact opposite

of *Detroit Edison*. There, FERC approved a tariff that would have placed unbundled retail *distribution* service (as opposed to *transmission* service) under FERC jurisdiction. 334 F.3d at 51-52. The court of appeals was unconvinced by FERC's claim in that case that FERC could assert jurisdiction over all services occurring on facilities used for both wholesale and retail distribution, since the retail distribution service FERC asserted authority over "involved neither jurisdictional sales nor jurisdictional transmission." Pet. App. A10. Here, by contrast, FERC applied Order No. 2003 "to jurisdictional transactions only." *Ibid.*[4]

c. Petitioners further assert (Pet. 28-30) that the decision of the court of appeals conflicts with the Eleventh Circuit's decision in *Southern Co.* v. *FCC*, 293 F.3d 1338 (2002). That case did not involve the FPA, which the court addressed only in dicta. See *id.* at 1344. Its discussion of the statute simply pointed out that regulation of local distribution facilities is "primarily in the hands of state and local authorities," *ibid.*, an unremarkable proposition that is fully consistent with the decision below.

4. Finally, petitioners suggest (Pet. 36-38) that the Commission's order is arbitrary and capricious because, in their view, it does not specify what distribution-level

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[4] In their discussion of *Detroit Edison*, petitioners also contend (Pet. 32-36) that by including certain construction, equipment, and engineering requirements in its standard interconnection procedures and agreement, FERC is asserting jurisdiction over the actual physical distribution facility itself, rather than just the interconnection transaction. The court of appeals correctly rejected that argument, explaining that petitioners had identified no requirements of Order No. 2003 that are not directly connected to FERC's undisputed authority over interstate transmission and wholesale sales. Pet. App. A11. Petitioners point to no such requirements here.

facilities are subject to an open-access tariff and are therefore covered by Order No. 2003. Although petitioners do not identify the precise basis for their challenge, they appear to be arguing that the order is arbitrary because it is unreasonably vague. That claim lacks merit. As the court of appeals noted, the Commission acknowledged that while there was some potential for uncertainty, most cases would present no controversy, and in the event of a dispute the Commission would rely in the first instance on public utilities to provide the necessary information, with the Commission resolving any further disputes. Pet. App. A15. The court determined that the record revealed "no grounds for upsetting the Commission's judgment" on that point. *Ibid.* That case-specific conclusion does not warrant further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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